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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,172	12/02/2003	Roger H. Hamilton	998_001CIP	4133
20874 7590 03/27/2007 MARJAMA & BILINSKI LLP 250 SOUTH CLINTON STREET SUITE 300 SYRACUSE, NY 13202			EXAMINER YIP, WINNIE S	
			ART UNIT	PAPER NUMBER
			3636	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/27/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/726,172

Applicant(s)

HAMILTON ET AL.

Examiner

Winnie Yip

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 January 1907.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,8-10 and 13-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,8 and 13-17 is/are rejected.
- 7) ☒ Claim(s) 9 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

This office action is in response to applicant's amendment filed on January 19, 2007 for a Request Continued Examination (RCE) of earlier application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

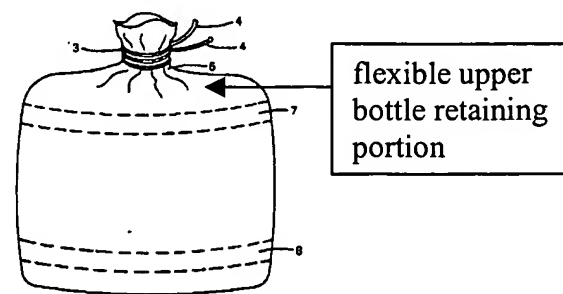
***Oath/Declaration***

1. Receipt is acknowledged of new oath filed October 31, 2006 and is placed in the record.

***Claim Rejections - 35 USC § 102***

2. Claims 1, 8, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Lucia, III et al. (US Patent No. 5,951,716).

Lucia, III et al. teach a carrier (1) comprising: a flexible open-top container (1) including a peripheral mouth portion (2), the mouth portion having an internal rigid plastic peripheral section having a plastic strap inserted therein for maintaining a predetermined shape and size to and provides the mount portion that is capable to permit ingress and contains of a bottle such as a oxygen bottle therein, and a flexible upper bottle retaining portion being disposed above the peripheral mouth portion and having a drawstring (4) to selectively reduce a diameter of the retaining portion with respect to the size of the bottle to be contained, and wherein the container (1) forming an interior space providing means for retaining personal item therein. Wherein, the



carrier of Lucia, III et al. is capable to retain an oxygen bottle to an applicant as claimed.

***Claim Rejections - 35 USC § 103***

3. Claims 1, 8, and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Locarno (US Patent No. 5,288,001) in view of Conte '531 and Lucia, III et al. (US Patent No. 5,951,716).

Locarno shows and discloses an elongated carrier for retaining an oxygen bottle to an appliance such as a wheelchair, the carrier comprising a flexible open-top container (2) being capably used for maintaining a close fitting relationship with an oxygen bottle (8) therein, the container (2) including an upper peripheral mouth portion (4) made of at least partially from a stiff material that maintains a predetermined shape and size and provides stiffness to the mouth portion to provide an upper bottle retaining portion for permitting ingress of an oxygen bottle (8) and for retaining the oxygen bottle without falling out of the carrier, a pair of upper flexible strap ends (18, 20) extending from each opposite sides of the upper bottle retaining portion and capably looped around an upper portion of the appliance (32, 34), and a pair of lower straps (26, 28) extending from each opposite sides of the lower portion of the container for looped and releasably engaging the bottom of the carrier with the legs of the appliance. Locarno does not define the pair of lower straps including a strap end having hook and loop fasteners on each side of the strap end as claimed. Conte teaches a carrier (40) capably used for retaining an oxygen bottle (see Figs 4 and 8), the carrier (40) comprising a flexible open-top container (48), a pair of upper straps (44) extending away from opposite sides of the upper portion of the container, and a pair of lower straps (42) extending away from opposite sides of the lower portion of the container, the lower straps each having a strap end including hook and loop fasteners (43) on

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each side of each strap end to enable each of the lower straps being selectively looped for attaching the carrier to a vertical portion of an appliance such as a crutch or a walker.

Therefore, it would have been obvious to one ordinary skill in the art at the time the invention was made to modify the carrier of Locarno having the pair of lower straps having hook and loop fasteners on each side of the strap end to enable selectively looped around a lower portion of the orthopedic appliance and fastened upon its as taught by Conte for selectively and securely attaching the lower portion of the straps of the carrier to a suitable a supported portion of the appliance. Locarno further does not define the upper mouth portion including a peripheral plastic reinforcement portion allowing an oxygen bottle being loaded vertically therein as claimed. Lucia, III et al. teach a carrier (1) comprising: a flexible open-top container (1) including a peripheral mouth portion (2) having an internal rigid plastic peripheral section having a plastic strap (7) inserted therein for maintaining a predetermined shape and size to and provides the mount portion that is capable to permit ingress and contains of a bottle, and a flexible upper bottle retaining portion being disposed above the peripheral mouth portion and having a drawstring (4) to selectively reduce a diameter of the retaining portion with respect to the size of the bottle to be contained. It would have been obvious to one ordinary skill in the art, at the time the invention was made, to modify the carrier of Locarno combined with Conte having the mouth portion of the container and having an plastic strip being provide within a sleeve to provide a peripheral plastic reinforcing section and a drawstring passed therethrough the sleeve to provide a flexible upper bottle retaining portion as taught by Lucia, III et al. for reducing opening of the container to retain a bottle inside of the container.

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Regard to claim 8, Locarno' carrier is considered to have the container that provides the means for retaining personal items therein such as an oxygen bottle or other personal items without the oxygen bottle.

Regard to claims 16 and 17, Locarno teaches the carrier is capably to selectively attached one of the orthopedic appliance such as a wheelchair or a walker. Notice wheelchair and a walker is not part of the claimed invention. Therefore, how the carrier of Locarno modified Conte and Lucia, III et al. is attached to the wheelchair or walker is given very letter patentability weight.

#### ***Allowable Subject Matter***

4. Claims 9-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new grounds of rejection.

#### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gross et al. '372, Fuller '846, and Eppolito '764 teach various carriers having straps and a container with flexible upper bottle retaining portion having a drawstring as similar to the claimed invention. Breslau '060, Gamble '533, Jackson '662, and Laun '789 teach various carriers having a container with mouth section having means for reducing size as similar to the claimed invention.


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***Inquiry Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 571-272-6870. The examiner can normally be reached on M-F (9:30-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Winnie Yip  
Primary Examiner  
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March 22, 2007